



LEGAL AFFAIRS
1625 NORTH MARKET BLVD., SUITE S 309
SACRAMENTO, CA 94834



Legal Guide S-10

RENT-TO-OWN TRANSACTIONS IN CALIFORNIA

October, 1998

In a rent-to-own transaction, a lessor rents personal property, such as a television, to a renter for the renter's use. The lessor owns the property unless and until the renter purchases it by one of the methods described in this Legal Guide.

The rent-to-own ("RTO") contract between the lessor and the renter allows the renter to use the personal property. In return for use of the property, the renter must pay a periodic (weekly or monthly) payment to the lessor. In order for the renter to continue to use the property, the renter must make the next periodic payment.

If the renter makes all of the periodic payments scheduled under the contract (for example, 78 weekly payments) or exercises the purchase option, the renter acquires ownership of the property.

If the renter does not make the next periodic payment when it is due, the RTO contract ends. If the renter promptly returns the property to the lessor undamaged, the renter is not liable for any other payments under the contract (but is liable for any past-due payments and lawful unpaid fees). The renter normally can reinstate the contract by paying past-due payments and properly-imposed late fees.

Part 1 of this Legal Guide explains RTO transactions and what you (the renter) need to understand before you sign an RTO contract. This part also discusses RTO contracts, the lessor's and your duties in the RTO transaction, your rights to reinstate the RTO contract if you default, and your options for purchasing the rental property.

Part 2 of this Legal Guide discusses resolving issues that may arise in RTO transactions, such as the renter's liability for damaged or stolen rental property, limits on.

the lessor's repossession and collection activities, and the lessors' and the renter's legal remedies

In this Legal Guide, "**lessor**" means a rent-to-own business that rents or offers to rent personal property to a renter under a rent-to-own agreement.

"**Personal property**" or "**property**" means an item such as a washer, dryer, television or VCR that is used by a renter for personal, family or household purposes. "**Renter**" means a consumer who rents personal property from a rent-to-own business.

"**You**" means a renter.

Part 1:
UNDERSTANDING RTO TRANSACTIONS

I.

**BEFORE YOU ENTER INTO
 AN RTO TRANSACTION**

A. The Cost of Renting-to-Own

Rent-to-own transactions are more expensive than they appear on the surface. The periodic payment required to rent the property usually seems low. But the total of the periodic payments often is quite high compared to the actual value of the property. Experts agree that a consumer will pay more to purchase property under an RTO contract than the consumer would pay to make a cash or credit purchase of the same item at a retail store.¹ For example, one study found that a television available for purchase at a department store for \$250 (cash price) would cost more than \$1,000 to purchase under an RTO contract at \$13 a week for 78 weeks.²

Before you sign an RTO contract, you should understand what the rental property will actually cost you if you purchase it under the RTO contract. Look carefully at the disclosure box on the price tag of the property that you are thinking about renting. The disclosure box looks like this:

RTO Disclosure Box

TOTAL OF PAYMENTS \$ 1,014	COST OF RENTAL \$ 764 Amount over cash price you will pay if you make all regular payments.	CASH PRICE \$ 250 Property available at this price for cash from retailers in this area.	
You must pay this amount to own the property if you make all the regular payments. You can buy the property for less under the early purchase option.	AMOUNT OF EACH PAYMENT \$ 13 per <u>week</u> (insert period)	NUMBER OF PAYMENTS 78	RENTAL PERIOD 18 months

[Disclosures must be in 10-point boldface type, or capital letters if typed.]

The "Total of Payments" box tells you how much you will have to pay to own the property if you make all of the payments scheduled under the RTO contract (in this example, \$1,014). The "Cash Price" box tells you the cash price that the property is selling for at retail stores in your area (in this example, \$250). The "Cost of Rental" box tells you how much more than the cash price you will pay if you make all of the payments scheduled under the RTO contract (in this example, \$764). The calculation looks like this:

Total of Payments - Cash Price = Cost of Rental(in this example, \$1,014 - \$250 = \$764)

You should compare these costs to the costs of purchasing the same item for cash and on credit from a retail store.

You can purchase the rental property using the RTO contract's purchase option for less than the total of payments. (See IV below for an explanation of the purchase option.) However, you still will usually pay more than the cash price of the property.

On the other hand, if you intend only to use the rental property for a while and then return it to the lessor, an RTO transaction may be a logical choice.

B. Aides to Understanding RTO Transactions

In California, RTO transactions are governed by the California Rental-Purchase Act ("Act").³ The Act

transaction before you enter into it. Some of these requirements are described in this section.

1. Price tag disclosures: The lessor must display the RTO disclosure box on a tag or sticker attached to each item that is available for rent.⁴ As explained in section A. above, you should look closely at the amounts in the "Total of Payments," "Cost of Rental" and "Cash Price" boxes.

The tag or sticker also must disclose whether the property is new or used. If it is new, the model year or the date the lessor acquired it must be disclosed; if used, the age or model year must be disclosed, if known.⁵

2. Sample contract: Upon your request, the lessor must give you a sample RTO contract which covers the rental property that you specify, and which contains all of the information that the RTO disclosure box requires to be disclosed. You may keep this sample.⁶ You should take the sample contract home to think about whether the terms are right for you.

3. Lessor's advertising: If a lessor's advertisement for an RTO agreement states any payment amount, the ad must disclose that the agreement is an RTO agreement and must state the total number and amount of payments necessary to acquire ownership. These disclosures, and others required by the Act, must be made clearly and conspicuously.⁷

II. THE RENT-TO-OWN CONTRACT

A. Renter's Cancellation Rights

You can cancel an RTO contract under several circumstances.

A renter who has just signed an RTO contract can cancel it without obligation within three business days of signing it if both of the following are true:

- The contract period is longer than one week, and
- The contract was signed at the renter's home or some other place away from the lessor's place of business.⁸

You also can cancel an RTO contract if you have not taken possession of the rental property.⁹

Of course, a renter in possession of rental property can cancel the contract at any time by not making the next periodic payment and promptly requesting the lessor to pick up the property.

B. Required Contract Contents

1. Form of contract: The entire RTO contract or agreement must be in a single document and must be written in the same language as was principally used in the sales presentation or negotiations leading to the signing of the contract.¹⁰ The lessor must give you a copy of the completed RTO contract after you have signed it. The lessor cannot enforce the contract against you until you have received a signed copy.¹¹ The lessor also must give you copies of all other documents which the lessor has asked you to sign at the time they are signed.¹²

The lessor cannot obtain your signature on an RTO contract if it contains blank spaces to be filled in later.¹³

2. Disclosure box: The RTO disclosure box (see page 2) must appear in the contract immediately above the renter's signature line.¹⁴ Other required contract disclosures (discussed below) add detail to the disclosures in the box.

3. Notice to renter: The contract must contain a notice that you are only renting the property, that you will not own the property unless you make all

of the scheduled payments or use the early purchase option, and that you cannot continue to use the property unless you make the required payments or use the purchase option.¹⁵

4. Disclosures: All disclosures in the RTO agreement must be made clearly and conspicuously. Some of the most important disclosures are described here:¹⁶

- a. Rental property: The contract must contain a description of the rental property sufficient to identify it, and a statement whether it is new or used. If the property is new, the lessor must disclose the model year or the date the lessor acquired it; if used, the lessor must disclose the age or model year, if known.¹⁷
- b. Rental period and payment amount: The contract must state the amount of each periodic payment; the minimum period for which you must rent the property (for example, one week); and, the "rental period" (that is, the length of the agreement if all scheduled periodic payments are made).¹⁸
- c. Purchase information: The contract must state the total number and amount of periodic payments necessary for you to acquire ownership of the property by making all of the scheduled periodic payments. The contract also must describe your right to acquire ownership of the property under the purchase option.¹⁹ For a description and example of the purchase option, see pages 6-7.
- d. Cash price and cost of rental: The contract must state the cash price of the property and the cost of rental.²⁰
 - **Cash price explained:** Basically, the "cash price" is the retail cash price of the property at retail stores in the area where the lessor does business.²¹

If the rental property is used, the contract cannot state a cash price that is more than the cash price for the same or similar new property.²²

- Cost of rental explained: The cost of the rental is the difference between the total of all the periodic payments scheduled under the RTO contract and the cash price of the property.²³ See example, page 2.

e. Other fees: The contract must disclose the amount and purpose of any other fee permitted by the Act that the lessor may charge you (for example, a late payment fee).²⁴

- Late payment fee explained: The lessor cannot charge you a late payment fee unless the fee is specified in the RTO contract and meets all of the following standards:

- The Act limits the total late-payment fee to five percent of the past-due payment or \$5.00, whichever is less. However, a minimum \$2.00 late fee is allowed. The lessor may charge more than one late fee for a late payment, but the total fees charged for that payment cannot be more than the maximum allowed.²⁵
- When the RTO contract requires weekly periodic payments, the lessor cannot charge a late fee for a payment that is less than three days late; when the contract requires longer than weekly periodic payments, the lessor cannot charge a late fee for a payment that is less than seven days late.
- Security deposit permitted: The contract may require you to pay a security deposit, which cannot be more than the equivalent of one month's rent.²⁶ For example, if the contract specifies weekly payments of \$10, the security deposit cannot be more than \$40. The Act strictly limits the lessor's use of the security deposit (see pages 8-9).
- Other fees prohibited: See section C. below.

- f. Renter's liability for loss: The contract must state whether you are liable (financially responsible) for loss or damage to the property. If so, the Act limits your liability to the fair market value of the property at the time of the loss or damage, or the amount necessary to exercise the purchase option at that time (see pages 6-7), whichever is less.²⁷

The Act also limits the circumstances under which you can be held liable for loss or damage to the rental property. (See Renter's Duty of Care and Liability for Loss or Damage in the next section.)

C. Prohibited Contract Contents

The RTO contract cannot contain any of the following terms:²⁸

1. Breach of peace: The contract cannot authorize the lessor to breach the peace in repossessing rental property or to enter your dwelling without obtaining your consent at the time of entry.²⁹

2. Renter's duty of care: Under California law, you must exercise "ordinary care" in using and caring for rental property (see page 7). The contract cannot change this statutory standard.³⁰ However, the lessor and you can agree in the RTO contract that you will be liable for loss or damage to the property caused by your negligent, reckless or intentional act (see page 7), or, as described in the next subsection, if the property is lost or stolen.³¹

3. Liability for loss or damage: The Act limits your liability for loss or damage to the rental property.³² The Act allows you to be held liable only when the property has been:

- lost or damaged due to your negligent, reckless or intentional act (see page 7), or
- lost or stolen and there is no evidence of burglary, or you cannot establish satisfactorily that you were not involved in the theft.³³ (See pages 9-10 for additional explanation.)

The Act limits the amount of your liability to either the fair market value of the property at the time of the loss or damage, or the amount necessary to exercise the purchase option at that time (see pages 6-7), whichever is less.³⁴

4. Prohibited fees and payments: The RTO contract cannot require you to pay any of the following fees:

- A downpayment, more than one advance periodic payment, or any other payment except a security deposit (which cannot be more than the equivalent of one month's rent).

- Both a late payment fee (see page 4) and a fee for off-premises collection of a past-due payment (for example, a fee by the lessor for picking up a past-due payment at your house).
 - A fee in connection with pickup of the rental property or termination or rescission of the RTO contract.
 - Any fee to reinstate the contract (other than past-due payments and properly-imposed late payment fees).
 - Any fee permitted by the RTO contract and the Act that is not reasonable and that the lessor has not actually incurred.³⁵
 - A "balloon" payment, except when you purchase the property using the purchase option.³⁶ (A "balloon" payment is a payment for the purchase or use of the rental property that is more than the regularly scheduled payment amount.)
- 5. Prohibited credit check:** A lessor who advertises "no credit check" or similar language cannot make any inquiry concerning your assets or credit history, and cannot require you to complete any document concerning your assets or credit history. In addition, the lessor cannot obtain a consumer credit report or an investigative consumer report on you.³⁷

III.

DEFAULT AND REINSTATEMENT

A. Default

If you fail to make a periodic payment, you will be in "default." Default means that the RTO contract has ended, and that you are not entitled to use or keep the rental property. However, you may be able to reinstate the contract, as described in this section.

If your RTO contract requires weekly periodic payments, you will be in default if you do not make the payment by the end of the seventh day after its due date. If your RTO contract requires longer-than-weekly periodic payments (for example, monthly payments), you will be in default at the end of the tenth day after the payment is due.³⁸

B. Reinstatement

A renter who is in default under an RTO contract can usually reinstate the contract. "Reinstate" means that the contract takes effect again because you have paid all past-due payments and any properly-imposed late payment fees. This section explains the time periods allowed for reinstatement and the circumstances under which the lessor can deny you the right to reinstate the contract.

1. Reinstatement periods:

- Seven-day reinstatement period:** If you are in default under an RTO contract that requires weekly periodic payments, and the rental property has not been returned to the lessor, you may reinstate the contract by paying all past-due payments and any properly-imposed late payment fees by the end of the seventh day after the payment's due date.³⁹ The lessor cannot require you to pay any other fee in connection with reinstatement.⁴⁰
- Ten-day reinstatement period:** If you are in default under an RTO contract that requires longer-than-weekly periodic payments, and the rental property has not been returned to the lessor, you may reinstate the contract by paying all past-due payments and any properly-imposed late payment fees by the end of the tenth day after the payment's due date.⁴¹ The lessor cannot require you to pay any other fee in connection with reinstatement.⁴²
- One-year reinstatement period:** Regardless of the payment period, if you have returned (or offered to return) the rental property to the lessor, you may reinstate the contract by paying all past-due payments and any properly-imposed late payment fees within one year after the payment's due date. You also have one year to reinstate the contract if the lessor allows you to continue to use the property.⁴³
- Effect of reinstatement:** All your rights and options under the RTO contract continue when it is reinstated.⁴⁴

2. Rental property upon reinstatement: If you reinstate the contract, the lessor must provide you with the same rental property, if it is available. Substitute property must be of the same brand, if available, and must be comparable to the original rental property in quality, age, condition and warranty coverage. If substitute property is provided, the lessor must disclose the model year or the date the lessor acquired it (new property), or the age or model year, if known (used property).⁴⁵

3. Limits on reinstatement rights: If you have defaulted in making payments on three consecutive occasions, you cannot reinstate the RTO agreement. If you have stolen or unlawfully disposed of the rental property, you cannot reinstate the agreement. The same is true if you have intentionally, wilfully, wantonly or recklessly damaged the property.⁴⁶

These are the only reasons a lessor can deny you the right to reinstate; the lessor has the burden of proving that a denial was permitted and in good faith.⁴⁷

C. Reduced Periodic Payments

If your income has been interrupted or significantly reduced, you may have the right to make reduced periodic payments if you want to continue to use the rental property. If you have made at least half the total scheduled periodic payments, the lessor must reduce the amount of your periodic payments when the income of any person who signed the RTO contract has been interrupted or significantly reduced. The interruption or reduction in income

must be caused by involuntary job loss, involuntary reduced employment, illness, or pregnancy. You must provide the lessor evidence of the amount and cause of the interruption or reduction of income.⁴⁸

IV.

PURCHASING THE RENTAL PROPERTY

In an RTO transaction, you can purchase the rental property in one of two ways: by paying all of the periodic payments scheduled under the RTO contract, or by using the purchase option. Both of these methods are explained below.

A. Paying All of The Periodic Payments

You can easily tell how much it would cost to purchase the rental property by paying all of the scheduled periodic payments. Just look in the "Total of Payments" box in the RTO disclosure box in your RTO contract. See page 2 for an example of the disclosure box.

By looking at the "Total of Payments" box on page 2, you can tell that it would cost \$1,014 to purchase the property in that example if you were to pay all of the 78 payments scheduled under the contract.

B. Using the Purchase Option

You can use the purchase option at any time after you make the first periodic payment. Purchasing the rental property under the purchase option is cheaper than making all of the periodic payments. The purchase option price is:

Calculating the Purchase Option Price⁴⁹

$$[\text{Cash price}] \times \left[\frac{\text{Number of remaining schedule periodic payments}}{\text{total number of scheduled periodic payments}} \right] = [\text{Purchase option price}]$$

You also must pay all past-due payments and properly-imposed fees.

Example: In the transaction described in the RTO disclosure box on page 2, suppose that you

decide to use the purchase option after making 39 payments. Suppose also that you have made one

payment late, have missed the current payment, and owe \$4.00 in late fees. The purchase option price is calculated as follows:

$$\$250 \times \frac{39}{78} = \$125$$

$$\$125 + \$13 \text{ past-due payment} + \$4 \text{ late fees} = \$142$$

You would have to pay \$142 to purchase the rental property by exercising the purchase option. Your total cost for the property would be:

$$\$13 \times 39 \text{ payments already made} = \$507$$

$$\$507 + \$142 \text{ purchase option price} = \$649$$

By exercising the purchase option after making one-half of the scheduled payments, you would save \$365 over making all of the scheduled periodic payments. However, you still would have paid \$649 for property with a cash price of \$250.

V.

YOUR DUTIES AS A RENTER

You have three basic duties under an RTO contract: to take proper care of the rental property, to make the periodic payments in a timely manner, and to promptly return the rental property undamaged when the RTO contract ends. Each of these duties is discussed below.

A. Ordinary Care

You must exercise "ordinary care" in using and caring for the rental property.⁵⁰ This means that you must take ordinary precautions to make sure that the property is not damaged while it is in your possession. An example of lack of ordinary care would be your leaving a window open above a rented television so that it is damaged by rain.

Under California law, a renter of personal property must repair any damage to the property caused by his or her failure to exercise ordinary care.⁵¹ In the example of the rain-damaged television, you would have a duty to repair the damage to the television caused by the rain coming through the window.

The RTO contract can hold you liable (financially

responsible) for damage to the rental property caused by your negligent, reckless or intentional act.⁵² Leaving the window open so that the television is damaged by rain is an example of a negligent act. An example of a reckless act would be your throwing a baseball near the rented television and accidentally breaking the picture tube. An example of an intentional act would be your throwing the rented television out the window.

You would be liable to the lessor for damage to the television in each of these examples, if the RTO contract states that you are liable for damages caused by negligent, reckless or intentional acts. The Act limits the amount of your liability to either the fair market value of the property at the time of the loss or damage, or the amount necessary to exercise the purchase option at that time (see pages 6-7), whichever is less.⁵³

The contract also can hold you liable in some circumstances where the rental property is stolen.⁵⁴ (See Liability for Loss or Damage, page 4; see pages 9-10 for additional explanation.)

B. Periodic Payments

While you have the rental property, you must make the periodic payments in a timely manner. Late payments may be subject to a late-payment fee (see page 4),⁵⁵ and may cause you to be in default under the RTO contract (see page 5).⁵⁶ Renters have generous reinstatement rights under the Act (the reinstatement period is one year in some circumstances). For details on default and reinstatement rights, see page 5-6.

If you decide that you do not want to continue to use the rental property, you should promptly notify the lessor and ask the lessor to pick up the property. See the next heading on return of the rental property.

C. Return of Property

Lessor usually pick up rental property when the RTO contract ends for any reason (for example, the renter decides not to continue to use the property, or the renter is in default and the contract has ended). You must make the rental property available to the lessor (or return it to the lessor, if that is your agreement with the lessor).

If you have not damaged the rental property, have promptly notified the lessor to pick up the property, and have made the property available for pick up, you have no further obligation to the lessor. However, you are liable to the lessor for any unpaid periodic payments and any properly-imposed late fees (see page 4). If you have damaged the property, or if the property has been lost or stolen, you may be liable to the lessor for the damage or loss. (See Renter's Liability for Loss, Renter's Duty of Care and Liability for Loss or Damage, page 4; see pages 9-10 for additional explanation.)

VI. THE LESSOR'S DUTIES IN AN RTO TRANSACTION

Lessors have a number of duties under the Act. In general, lessors cannot engage in unfair, unlawful or deceptive conduct, and cannot make any untrue or misleading statement in connection with an RTO contract, including any violation of the Act.⁵⁷ Other duties include:

A. Defective Rental Property

A lessor cannot deliver any rental property to a renter that the lessor knows or has reason to know is defective.⁵⁸

B. Duty to Maintain Property

1. General duty: The lessor must maintain the rental property in good working order while the RTO contract is in effect, and cannot charge you any fee for maintaining the property in addition to the regular periodic payment amount. You are not responsible for any rental fee while the property or any substitute property is not in good working order.⁵⁹

The lessor's duty to maintain the property does not apply to repair of damage caused by your intentional, willful, wanton, reckless or negligent conduct.⁶⁰

2. Timelines and substitute property: The lessor must repair or replace the rental property by the end of the second business day after the lessor has received notice from you that the property is not working properly.⁶¹ If the lessor cannot make the repairs or provide a replacement immediately, the lessor must temporarily substitute property of

comparable quality and condition while the repairs are being made. If repairs cannot be completed to your reasonable satisfaction within 30 days after you notified the lessor, the lessor must permanently replace the property.⁶² (You can voluntarily agree to a longer period for repairs to be made.)

Replacement property must be the same brand as the original property, if available, and comparable to it in age, condition, and warranty coverage. If the same brand is not available, the replacement brand must be acceptable to you.⁶³

3. Parties' rights when property replaced: All of the lessor's and renter's rights and obligations under the RTO contract and the Act that applied to the original rental property apply to the replacement property.⁶⁴

C. Receipt for Payment

The lessor must give you a written receipt for each payment made.⁶⁵

D. Notice of Amount to Acquire Ownership

The lessor must give you a statement of the amount necessary to acquire ownership of the rental property upon your request, and automatically when you have made half the total periodic payments necessary to acquire ownership. The statement must state the total amount that you would have to pay to acquire ownership by using the purchase option (see pages 6-7) and by making all the remaining periodic payments scheduled under the RTO agreement.⁶⁶

E. Transfer of Warranties

If you purchase the property from the lessor, the lessor must transfer the unexpired portion of any transferable warranties made by the manufacturer, distributor or seller. These warranties then apply as if you were the original purchaser of the rental property.⁶⁷

F. Refund of Security Deposit

If you have paid a security deposit (see page 4), the lessor must return it within two weeks after getting the property back from you.

The lessor can deduct an amount reasonably necessary to pay for loss or repair of the property.

However, the loss or damage cannot be due to reasonable wear and tear, and must be for something that you can be held liable for under the RTO contract and the Act (for example, damage caused by your intentional conduct). (See Ordinary Care and Liability for Loss, page 4; see Damaged, Lost or Stolen Rental Property, below.)

The Act limits the amount that the lessor can deduct from your security deposit to either the fair market value of the property at the time of loss, or the amount necessary for the renter to purchase the property under the purchase option at that time (see pages 6-7), whichever is less.

If the lessor makes a deduction from your security deposit, the lessor must give you an itemized statement of the amount of the security and the amount and reason for the deduction. The refund and statement must be delivered together (within the two week period), and may be delivered personally or by mail.⁶⁸

G. Notice to Cosigners

If more than one person signs the RTO contract, the lessor must deliver a cosigner notice to each person before they sign the contract. The lessor does not have to give the notice to cosigners who are married to each other or who both receive possession of the rental property.

The content of the notice is set forth in the Act; generally, the notice explains that the cosigner has the same obligation to make payments that the renter has. The notice must be in English, and in the same language as was principally used in the sales presentation or negotiations leading to the signing of the RTO contract. The notice may be in the RTO contract (above or adjacent to the disclosure box), or on a separate piece of paper.⁶⁹

A cosigner who does not receive a copy of the cosigner notice and the RTO agreement as required by the Act has no liability in connection with the RTO transaction.⁷⁰

H. Sale of Service Contracts and Liability Waivers

A lessor cannot offer or sell you a service contract for rental property that provides coverage while the RTO contract is in effect.⁷¹

However, the lessor may offer or sell a service contract that provides coverage after you acquire ownership of the rental property if both of the following are true: the offer or sale is not made until you have paid at least half the scheduled periodic payments or have used the purchase option; and, before the sale, the lessor has clearly and conspicuously informed you in writing that the purchase of the service contract is optional.⁷²

If you have purchased a service contract but you default on the RTO contract (see page 5) or do not acquire ownership of the property within the rental period stated in the contract, the lessor must refund everything that you have paid for the service contract. The lessor must make this refund within two weeks after receiving your last rental payment.⁷³

The Act prohibits the lessor from selling the renter insurance or a liability waiver against loss or damage to rental property.⁷⁴

Part 2: RESOLVING ISSUES AND DISPUTES IN RTO TRANSACTIONS

I. DAMAGED, LOST OR STOLEN RENTAL PROPERTY

One of your basic duties as a renter is to exercise ordinary care in using and caring for the rental property. You are liable (financially responsible) to the lessor for loss or damage to the property that is caused by your failure to exercise ordinary care. (See page 7.) The RTO contract can also hold you liable for loss or damage to the rental property caused by your reckless or intentional acts.

The RTO contract can also hold you liable if the property is stolen. However, you are not liable for loss due to theft if there is evidence of burglary (for example, physical evidence or a police report), or if you establish by a preponderance of the evidence that you did not steal the property or aid or abet in its theft.⁷⁵

The Act sets a limit on the amount the lessor can hold you liable for if the property is damaged, lost or stolen: You are liable only for the fair market value of the property at the time of the damage,

loss or theft, or for the amount necessary to use the purchase option at that time (pages 6-7), whichever is less.⁷⁶

To figure out your liability for damaged, lost or stolen rental property, you must first figure out the purchase option price at the time of loss or theft. The example on pages 6-7 shows how to do this.

Using the example on page 7, assume that the property was destroyed due to your negligence after you had made 39 payments, and that the property's fair market value when it was destroyed was \$150. Your liability for the rental property would be \$142 (the amount necessary to use the purchase option), because that amount is less than the property's fair market value (\$150).

II. LIMITS ON THE LESSOR'S COLLECTION

The Act significantly limits the lessor's collection and repossession activities.⁷⁷ Some of the most important limitations are described below.

A. Deceptive, Harassing and Unlawful Conduct

A lessor cannot engage in any unfair, unlawful or deceptive conduct and cannot make any untrue or misleading statement in connection with collecting payments or repossessing property. A lessor cannot engage in collection activity that would be unlawful in collecting a debt under the California Fair Debt Collection Practices Act.⁷⁸

A lessor cannot harass, oppress, or abuse any person in connection with an RTO agreement. For example, a lessor cannot use abusive language or cause a telephone to ring repeatedly with intent to annoy any person.⁷⁹

B. Communications with Renter

Generally, the lessor cannot communicate regarding an RTO agreement with any person other than the renter, or the renter's or lessor's attorney.⁸⁰ The lessor generally cannot communicate with the renter in connection with the collection of payments or the recovery of rental property at the renter's place of employment or at a time or place that is unusual or inconvenient to the renter (8:00 a.m. to 9:00 p.m. at the renter's location is assumed to be convenient absent knowledge to the contrary).⁸¹

Generally, the lessor must cease further communication with the renter if the renter sends the lessor a written request to do so.⁸²

C. Communications with Others

The lessor may communicate with others to the extent that the communication is reasonably necessary to obtain information about the location of the renter or any rental property, subject to restrictions in the Act.⁸³ For example, when communicating with others for this purpose, the lessor must identify itself and state that it is confirming location information about the renter. The lessor generally cannot communicate with any person more than once.⁸⁴

III. LESSOR'S REMEDIES

A. Unpaid Fees

The lessor may recover unpaid periodic payments and certain unpaid fees from the renter, subject to the conditions described below.

1. Conditions on recovery

a. Contractual conditions

- 1) Copy of contract and cosigner notice: The lessor must have given the renter a copy of the signed RTO contract. The RTO contract cannot be enforced against the renter until the renter has received a signed copy of the contract.⁸⁵ A cosigner who has not received a copy of the RTO contract or the cosigner notice as required by the Act is not liable in connection with the RTO transaction.⁸⁶
- 2) Disclosure of late fee: The lessor cannot recover any late fee unless it is disclosed in the RTO contract, is within the limits set by the Act, and is imposed under the conditions allowed by the Act.⁸⁷ (See page 4 for additional details.)
- 3) Contents: The contract must contain all of the agreements between the lessor and the renter regarding their respective rights and obligations. The contract must be written in the same language as was principally used in any sales presentation or negotiations leading to the signing of the contract.

- 4) **Certain fees prohibited:** The lessor cannot recover any of the following fees that are prohibited by the Act:
- A downpayment, more than one advance periodic payment, or any other payment except a security deposit (which cannot be more than the equivalent of one month's rent).
 - Both a late payment fee (see page 4) and a fee for off-premises collection of a past-due payment (for example, a fee by the lessor for picking up a past-due payment at the renter's house).
 - A fee in connection with pickup of the rental property or termination or rescission of the RTO contract.
 - Any fee to reinstate the contract (other than past-due payments and properly-imposed late payment fees).
 - Any fee permitted by the RTO contract and the Act that is not reasonable and that the lessor has not actually incurred.⁸⁸
 - A "balloon" payment, except when the renter purchases the property using the purchase option.⁸⁹ (A "balloon" payment is a payment for the purchase or use of the rental property that is more than the regularly scheduled payment amount.)

The lessor may be able to recover other fees, if they are permitted by the Act, are disclosed in the RTO contract, are reasonable, and have been actually incurred by the lessor.⁹⁰

- b. **Property must function properly:** The renter is not liable for unpaid rent for any period during which the rental property or any substitute property was not in good working order (unless the renter's intentional, wilful, wanton, reckless or negligent conduct damaged the property).⁹¹

- c. **Return of security deposit:** If the renter paid a security deposit, the lessor must have returned it to the renter within two weeks after the lessor took has taken possession of the property from the renter.⁹² The lessor can deduct an amount reasonably necessary to pay for loss or repair of the property. However, the loss or damage cannot be due to reasonable wear and tear, and must be for something that the renter can be held liable for under the RTO contract and the Act (for example, damage caused by the renter's intentional conduct). (See Ordinary Care and Liability for Loss, page 5; see pages 9-10.) The Act limits the amount that the lessor can deduct from the security deposit to the fair market value of the property at the time of loss, or the amount necessary for the renter to purchase the property under the purchase option (see pages 6-7), whichever is less.

- d. If the lessor makes a deduction from the security deposit, the lessor must give the renter an itemized statement of the amount of the security and the amount and reason for the deduction. The refund and statement must be delivered together (within the two week period), and may be delivered personally or by mail.⁹³

Technically, the lessor's failure to properly return (or account for deductions and return the balance of) the renter's security deposit would be a violation of the Act which the renter could assert in an action against the lessor (see page 14).⁹⁴

- d. **Return of service contract payments:** If the renter purchased a service contract, the lessor must have refunded all of the renter's payments for the service contract within two weeks after receiving the renter's last periodic payment.⁹⁵ Here also, the lessor's failure to properly return the renter's service contract payments would be

a violation of the Act which the renter could assert in an action against the lessor.⁹⁶

- e. Offset: The Act does not state whether the lessor can offset the amount of any refund of the security deposit or service contract payments against the amount of unpaid fees claimed due from the renter. However, the Act does require that these refunds be made, and generally prohibits any waiver or modification of its terms.⁹⁷
- f. Lessor must not have improperly denied reinstatement: Page 6 lists the permissible reasons for the lessor to deny the renter the right to reinstate the RTO contract. The lessor has the burden of proving that a denial was permitted and was in good faith.⁹⁸ A lessor who has denied the renter the right to reinstate, and who cannot meet this burden, has committed a violation of the Act which the renter could assert in an action against the lessor.⁹⁹
- g. Lessor must have properly stated the cash price: See "Limit on recovery" below.

B. Loss or Damage to the Rental Property

The lessor may recover from the renter for damage, loss or theft of the rental property, subject to the conditions described below.

1. Conditions on recovery

- a. Contractual conditions
 - 1) Copy of contract and cosigner notice: See page 10.
 - 2) Contents: See pages 10-11.
 - 3) Disclosure of liability: The RTO contract must state that the renter is liable for loss or damage to the property and disclose the maximum amount of that liability.¹⁰⁰
- b. Limit on recovery: The lessor cannot seek to hold the renter liable for an amount that is greater than the amount allowed by the Act:

that is, the fair market value of the property at the time of loss, or the amount necessary to exercise the purchase option at that time, whichever is less.¹⁰¹ (See example, pages 9-10.)

The renter can be held liable for loss due to theft, but not if there is evidence of burglary (for example, physical evidence or a police report), or if the renter establishes by a preponderance of the evidence that he or she did not steal the property or aid or abet in its theft.¹⁰² The same monetary limit on recovery applies to a loss due to theft.¹⁰³

Since the amount of the renter's liability is the lesser of the property's fair market value or its purchase option price, both must be determined. As shown in the purchase option example at page 7, it is necessary to know the cash price of the property in order to calculate the purchase option price. Therefore, in order for a court to determine which of these amounts is less, it seems that the lessor should be required to produce records or evidence that properly substantiates the cash price of the property.¹⁰⁴

The cash price is essentially the retail cash price of the rental property in retail stores in the area where the lessor does business.¹⁰⁵ The Act requires the lessor to keep records that establish that the cash price disclosed in the RTO contract is the cash price under this definition. The Act lists three examples of methods that the lessor may use to establish the cash price of rental property:

- Published prices or advertisements, within 90 days before the date of the RTO contract, by retailers of similar products in the lessor's trade area.
- An amount equal to twice the documented actual cost (including freight) of the rental property to the lessor from a wholesaler, distributor or manufacturer.
- For home appliances and home electronic products only, the manufacturer's suggested retail price.¹⁰⁶

If the lessor wilfully discloses a cash price in an RTO agreement that is greater than the cash price as defined above, the RTO contract is void, the renter can keep the rental property without any obligation, and the lessor must refund to the renter all amounts paid.¹⁰⁷

The cash price for used property cannot exceed the cash price for the same or similar new property.¹⁰⁸ The renter can void an RTO contract that violates this prohibition.¹⁰⁹

- c. Return of security deposit and service contract payments: If the renter paid a security deposit, the lessor must return it to the renter within two weeks after the lessor has taken possession of the property from the renter (see page 11).¹¹⁰ If the renter has purchased a service contract from the lessor, the Act seems to require that the lessor refund all of the renter's payments for it, even though the property has been lost or damaged.¹¹¹ The lessor must make this refund within two weeks after the lessor's receipt of the renter's last rental payment (see page 11).¹¹²
- d. Offset: See page 12.
- e. Lessor must not have improperly denied reinstatement: See page 12 .

2. Renter's refusal to return property:

Sometimes, the renter refuses to return the rental property to the lessor or will not allow the lessor to pick up the property. The Act does not specifically address the renter's liability in these situations, but its provisions on renter's liability nonetheless can be read to apply.

Under the Act, the renter can be held liable for loss or damage to the rental property, if the RTO contract so provides.¹¹³ Assuming the requisite contract language, the renter's refusal to return the property may be treated as a "loss" caused by the renter's "intentional act." The Act limits the renter's liability for loss caused by the renter's intentional act to the property's fair market value at the time of loss, or the purchase option price at that time,

whichever is less.¹¹⁴ Thus it seems clear that the lessor in these situations cannot, consistent with the Act, recover all of the unpaid periodic payments scheduled under the RTO contract.

The formula for calculating the purchase option price is set out at page 7 (see also Damaged, Lost or Stolen Property, pages 9-10). The formula includes past due payments. Since the lessor cannot know with certainty that the RTO contract will not be reinstated until the renter has defaulted on three consecutive periodic payments,¹¹⁵ it is suggested that the past-due payments component of the purchase option formula be limited to no more than the amount of three periodic payments (plus associated late fees that are properly imposed).¹¹⁶

Appropriate credit should be given for any period during which the rented property or any substitute property was not in good working order (see page 11).¹¹⁷

An alternative approach would be to treat the renter as having converted the rental property.¹¹⁸ The usual measure of damages for conversion is the market value of the converted property at the time of conversion, plus interest from that time.¹¹⁹ The lessor also can recover fair compensation for its time and money (if any) properly expended pursuing the property.¹²⁰

C. Lessor Must Observe Act's Limitations

A consumer who is damaged by the lessor's violation of the Act may bring an action against the lessor for damages.¹²¹ For example, if the lessor attempted to hold the renter liable for loss or damage to the property except as permitted by the Act, or attempted to recover a prohibited or excessive fee, or included a prohibited contract provision, the lessor would have violated the Act, and the renter who was damaged could assert the violation in an action against the lessor (see page 14).¹²²

Further, if the lessor included a provision in the RTO contract that is prohibited by the Act, the provision is void, and the renter can void the contract.¹²³

D. Venue

A lessor's suit against the renter must be filed in the proper venue. Venue in a lawsuit on an RTO contract is proper in the county where the contract was signed or where the renter lives at the time the lawsuit is filed.¹²⁴ The RTO contract cannot authorize the lessor or its agent to bring suit against the renter in an improper venue.¹²⁵

IV. RENTER'S REMEDIES

A. Cancellation and Non-Renewal

See page 3.

B. Unenforceable Provisions

1. "Void" and "voidable" explained: A "void" contract or contract term has no legal force or binding effect. A "voidable" contract or term has a defect or imperfection that allows one of the parties to the contract to cancel it or disregard the provision.

2. Effect of Void and Voidable Provisions and Agreements: An RTO contract that contains any provision prohibited by the Act is voidable by the renter. The provision itself is void and is a violation of the Act.¹²⁶

If a lessor willfully discloses a cash price in an RTO contract that is more than the cash price under the Act's definition (see page 12), the contract is void.¹²⁷ In addition, the renter is entitled to keep the property without any obligation, and the lessor must return to the renter all amounts paid.¹²⁸ The cash price for used property cannot exceed the cash price for the same or similar new property.¹²⁹ The renter can void an RTO contract that violates this prohibition.¹³⁰

An RTO contract is not enforceable against the renter until the renter has received a copy of the fully-completed and signed contract.¹³¹

3. Waiver or modification void: The renter cannot waive any defense, counterclaim or right that the renter may have against the lessor, its agent, or any successor in interest.¹³² Further, any waiver or modification of the Act's provisions by either the renter or lessor is void and unenforceable.¹³³

C. Renter's Cause of Action

- A consumer who is damaged by the lessor's violation of the Act is entitled to recover all of the following:
- Actual damages.
- Twenty-five percent of the total amount of payments required to obtain ownership if the renter were to make all the scheduled payments under the RTO agreement, but not less than \$100 or more than \$1,000.
- Exemplary damages for intentional or wilful violations of the Act, in an amount determined proper by the court.
- The consumer's reasonable attorney's fees and court costs.
- Equitable relief as the court deems proper.¹³⁴

The Act's rights, remedies and penalties are cumulative to those under other laws.¹³⁵

D. Multiple Plaintiffs

Where more than one consumer is a party to an RTO contract, these limitations apply to all of them in the aggregate, and they may recover only one recovery for each violation.¹³⁶

E. Correction of Errors

The lessor is not liable for a violation of the Act arising from a "bona fide error," if the lessor gives the renter written notice of the error within 30 calendar days after discovering it and before an action under the Act is filed or before the lessor receives written notice of the error from the renter.¹³⁷

If correction of the error would increase the amount of any payment, the lessor may not collect the amount of the increase, and the renter may enforce the RTO agreement as initially written.¹³⁸ However, if correction of the error would decrease the amount of any payment, the lessor must refund to the renter the amount of the overpayment since the beginning of the transaction.¹³⁹

F. Willful Violation a Misdemeanor

Willful violation of the Act is a misdemeanor.¹⁴⁰

Part 3: OTHER RESOURCES

Consumer Law Sourcebook for Small Claims Court Judicial Officers, Rent-to-Own Transactions, §§ 27.125-27.197 (California Department of Consumer Affairs, 1996).

Witkin, *Summary of California Law* (9th ed. 1987), Sales, § 320 (¶ 27a) (1998 Supplement).

NOTICE: The Department of Consumer Affairs strives to make its legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions

about the law's application to particular cases should be directed to a specialist.

Prepared by:
John C. Lamb, Senior Staff Counsel
Legal Services Unit, October, 1998

This publication is available on the Internet. See the Department of Consumer Affairs' homepage at www.dca.ca.gov.

This document may be copied, if all of the following conditions are met: the meaning of the copied text is not changed; credit is given to the Department of Consumer Affairs; and all copies are distributed free of charge.

¹For example, see National Consumer Law Center, *Unfair and Deceptive Acts and Practices* (4th ed. 1997), § 5.7.4 and following; Consumer Action, "Rent-to-Own: It's a Bad Deal" (December, 1993).

²Consumer Action, "Rent-to-Own: It's a Bad Deal" (December, 1993); see CalPIRG, "Don't Rent To Own: The 1997 PIRG Rent-To-Own National Survey" (June, 1997).

³CC §§ 1812.620-1812.649. The Act also is called the "Karnette Rental-Purchase Act."

⁴CC § 1812.623(b),(c). See these sections regarding rental items that are not on display but that appear in photographs or catalogs.

⁵CC §§ 1812.623(a)(2).

⁶CC § 1812.629(a).

⁷CC § 1812.630(a)(1). This section also requires the lessor's ad to disclose that a renter does not acquire ownership of the property until all the payments necessary to acquire ownership have been made, and that the property is used, if that is the case.

In print advertisements that advertise more than one item, a schedule or table may be used to meet the requirements of CC § 1812.630(a)(1). (See CC § 1812.630(a)(2).) See definition of "advertisement" at CC § 1812.622(a).

⁸CC §§ 1812.628(a), 1689.5. In legal terms, the renter can cancel the contract without obligation within three business days of signing it if the contract has an initial term of more than one week and if it was made at "other than appropriate trade premises."

⁹CC § 1812.628(b).

¹⁰CC § 1812.623(a).

¹¹CC § 1812.629(c).

¹²CC § 1812.629(c).

¹³CC § 1812.629(b).

¹⁴CC § 1812.623(b).

¹⁵CC § 1812.623(a)(10).

¹⁶Required contract disclosures are set forth at CC § 1812.623. Prohibited contract provisions are set forth at CC § 1812.624.

¹⁷CC §§ 1812.623(a)(1),(2).

¹⁸CC § 1812.623(a)(3).

¹⁹CC §§ 1812.623(a)(4),(11). See CC § 1812.632.

²⁰CC §§ 1812.623(a)(5),(6).

²¹CC § 1812.622(e). In legal terms, the cash price is the price at which retail sellers are selling and retail buyers are buying the same or similar property in the same trade area in which the lessor's place of business is located. See CC § 1812.644 regarding evidence of cash price and record keeping requirements.

²²CC § 1812.624(a)(17).

²³CC § 1812.622(f).

²⁴CC §§ 1812.623(a)(7),(8).

²⁵CC § 1812.626.

²⁶CC § 1812.625(a).

²⁷CC §§ 1812.623(a)(9), 1812.627(a). See CC § 1812.632(a).

²⁸Prohibited contract provisions are set forth at CC § 1812.624. Required contract disclosures are set forth at CC § 1812.623. The lessor cannot require the renter to sign any document that contains a prohibited provision. (CC § 1812.624(a).)

²⁹CC § 1812.624(a)(2).

³⁰CC § 1812.624(a)(9).

³¹CC §§ 1812.623(a)(9). See CC §§ 1812.624(a)(9),(11), 1812.627.

³²CC § 1812.624(a)(11).

³³CC §§ 1812.627(a),(b).

³⁴CC § 1812.627(a). See CC § 1812.632(a).

³⁵CC §§ 1812.624(a)(5),(6),(7),(8),(14). The lessor has the burden of proving that any fee imposed under CC § 1812.624(a)(7) was reasonable and was an actual cost incurred by the lessor.

³⁶CC § 1812.624(a)(12).

³⁷CC § 1812.630(b). See CC § 1812.640 (limits reports that lessors can make to consumer credit reporting agencies).

³⁸CC § 1812.631(a).

³⁹CC §§ 1812.631(a),(b).

⁴⁰CC § 1812.624(a)(5).

⁴¹CC §§ 1812.631(a),(c).

⁴²CC § 1812.624(a)(5).

⁴³CC §§ 1812.631(b),(c).

⁴⁴CC §§ 1812.631(b),(c).

⁴⁵CC § 1812.631(d).

⁴⁶CC § 1812.631(e).

⁴⁷CC § 1812.631(e).

⁴⁸CC § 1812.632(c). See this section for important additional details.

⁴⁹CC § 1812.632(a).

⁵⁰See CC §§ 1812.624(a)(9), 1928, 1929.

⁵¹CC §§ 1928, 1929.

⁵²CC §§ 1812.623(a)(9), 1812.624(a)(9),(11), 1812.627(b).

⁵³CC §§ 1812.623(a)(9), 1812.627(a). See CC § 1812.632(a).

⁵⁴CC §§ 1812.623(a)(9), 1812.627(b).

⁵⁵CC §§ 1812.623(a)(7), 1812.626. The fee must be specified in the RTO contract.

⁵⁶CC § 1812.631(a).

⁵⁷CC § 1812.639.

⁵⁸CC § 1812.633(h).

⁵⁹CC §§ 1812.633(a),(f).

⁶⁰CC § 1812.633(g). If the lessor does not maintain the property for one of these reasons, the lessor has the burden of proving that it acted justifiably and in good faith.

⁶¹CC § 1812.633(b).

⁶²CC § 1812.633(c).

⁶³CC § 1812.633(d).

⁶⁴CC § 1812.633(e).

⁶⁵CC § 1812.629(d).

⁶⁶CC § 1812.632(b). The statement must be delivered or mailed to the renter within seven days after the renter's request or the date on which half of the periodic payments have been made.

⁶⁷CC § 1812.634. See CC § 1812.623(a)(13).

⁶⁸CC §§ 1812.625(a),(b).

⁶⁹CC §§ 1812.643(d),(e).

⁷⁰CC § 1812.643(g). See this section for additional details.

⁷¹CC § 1812.635(a). "Service contract" is defined at CC § 1791(o).

⁷²CC § 1812.635(b).

⁷³CC § 1812.635(c). (See this section and CC §§ 1794.4, 1794.41 on cancellation rights.)

⁷⁴CC § 1812.624(a)(3).

⁷⁵CC § 1812.627(b).

⁷⁶CC § 1812.627(a). See CC § 1812.632(a).

⁷⁷CC § 1812.638. These limitations are based on those in the California Fair Debt Collection Practices Act

⁷⁸CC § 1812.638(a).

⁷⁹CC § 1812.638(f). See this section for additional details.

⁸⁰CC § 1812.638(d). See this section for exceptions.

⁸¹CC § 1812.638(c).

⁸²CC § 1812.638(e). See this section for exceptions.

⁸³CC § 1812.638(d)(1). See CC §§ 1812.638(b)(1)-(5) for these restrictions.

⁸⁴CC §§ 1812.638(b)(1),(2). See these sections for additional details.

⁸⁵CC § 1812.629(c).

⁸⁶CC § 1812.643. Under CC § 1812.643, cosigners who are married to each other or who receive possession of the rental property do not have to be given the cosigner notice.

⁸⁷CC §§ 1812.623(a)(7), 1812.624(a)(13), 1812.626.

⁸⁸CC §§ 1812.624(a)(5),(6),(7),(8),(14). **The lessor has the burden of proving that any fee imposed under CC § 1812.624(a)(7) was reasonable and was an actual cost incurred by the lessor.**

⁸⁹CC § 1812.624(a)(12).

⁹⁰CC §§ 1812.623(a)(7), 1812.624(a)(7). Under CC § 1812.624(a)(7), the lessor must prove that the fee was reasonable and was actually incurred.

⁹¹CC §§ 1812.633(a),(f),(g). If the lessor does not repair the property because of the renter's intentional, wilful, wanton, reckless or negligent conduct, the lessor has the burden of proof to establish that its refusal was justified and in good faith.

⁹²CC § 1812.625.

⁹³CC §§ 1812.625(a),(b).

⁹⁴CC § 1812.636(a).

⁹⁵CC § 1812.635(c). The lessor must refund all consideration paid for the service contract if the renter defaults or does not acquire ownership of the property within the rental period stated in the contract.

⁹⁶CC § 1812.636(a).

⁹⁷CC § 1812.646.

⁹⁸CC § 1812.631(e).

⁹⁹CC § 1812.636(a).

¹⁰⁰CC §§ 1812.623(a)(9), 1812.624(a)(11), 1812.627.

¹⁰¹CC §§ 1812.624(a)(11), 1812.627.

¹⁰²CC § 1812.627(b).

¹⁰³CC § 1812.627.

¹⁰⁴CC § 1812.632(a). See CC § 1812.644.

¹⁰⁵CC § 1812.622(e). See endnote 21.

¹⁰⁶CC § 1812.644(b). "Home appliance" and "home electronic product" are defined at CC §§ 1791(r) and (s), respectively.

¹⁰⁷CC § 1812.644(d).

¹⁰⁸CC § 1812.624(a)(17).

¹⁰⁹CC § 1812.624(b).

¹¹⁰CC § 1812.625(b).

¹¹¹See CC § 1812.635(c).

¹¹²CC § 1812.635(c).

¹¹³CC §§ 1812.623(9), 1812.624(a)(9),(11), 1812.627(b).

¹¹⁴CC § 1812.627(a).

¹¹⁵CC § 1812.631(e)(2). Default in making payments on three consecutive occasions is one of the circumstances under which the lessor can deny the renter the right to reinstate.

¹¹⁶An amount corresponding to fewer past-due payments should be allowed if the lessor denied the right to reinstate earlier on the ground that the renter stole or unlawfully disposed of the rental property. (See CC § 1812.631(e)(2).)

¹¹⁷CC § 1812.633(f).

¹¹⁸CC § 1925; Witkin, *Summary of California Law* (9th ed. 1987), Torts, § 610.

¹¹⁹CC § 3336; 14 Cal.Jur.3d, *Conversion* §§ 38, 45. This is the measure of damages in conversion actions unless it would be manifestly unjust, in which case CC § 3336's alternate measure of damages ("loss indemnification") is used. (*Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 215 [193 Cal.Rptr. 322, 329]; see e.g., *Myers v. Stephens* (1965) 233 Cal.App.2d 104, 116 [43 Cal.Rptr. 420, 430 (lost profit awarded instead of value of converted property where lost profit was 12 times greater than value of converted property).)

¹²⁰CC § 3336. Attorneys fees and expenses incurred in preparation for litigation cannot be recovered under this provision. (14 Cal.Jur.3d, *Conversion* § 47.)

¹²¹CC § 1812.636.

¹²²CC § 1812.636(a).

¹²³CC § 1812.624(b).

¹²⁴CC § 1812.645.

¹²⁵CC § 1812.624(a)(16).

¹²⁶CC § 1812.624(b).

¹²⁷CC § 1812.644(d).

¹²⁸CC § 1812.644(d).

¹²⁹CC § 1812.624(a)(17).

¹³⁰CC § 1812.624(b).

¹³¹CC § 1812.629(c). See CC § 1812.643 on cosigners.

¹³²CC §§ 1812.624(a)(4),(15).

¹³³CC § 1812.646.

¹³⁴CC § 1812.636(a).

¹³⁵CC § 1812.648.

¹³⁶CC § 1812.636(b).

¹³⁷CC § 1812.637(a). See this section for the definition of "bona fide error."

¹³⁸CC § 1812.637(b).

¹³⁹CC § 1812.637(c).

¹⁴⁰CC § 1812.647.